

FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, D.C. 20426

May 31, 2007

In Reply Refer To:  
Dominion Cove Point LNG, LP  
Docket No. RP07-429-000

Dominion Cove Point LNG, LP  
120 Tredegar Street  
Richmond, VA 23219

Attention: Machel F. Grim, Director, Regulatory & Pricing  
Dominion Transmission, Inc.

Reference: Second Revised Sheet No. 216

Dear Ms. Grim:

1. On May 1, 2007, Dominion Cove Point LNG, LP (Cove Point) filed the tariff sheet<sup>1</sup> listed in footnote 1 to incorporate a provision into its tariff permitting Cove Point to agree with a customer to modify the term of its service, without requiring the service agreement to be filed with the Commission. The Commission accepts and suspends the tariff sheet listed in footnote 1, to be effective June 1, 2007, the date requested, subject to refund and to the explanation or revision directed herein.

2. Public notice of Cove Point's filing was issued on May 4, 2007. Interventions and protests were due as provided for in § 154.210 of the Commission's regulations, 18 C.F.R. § 154.210 (2006). Pursuant to Rule 214 (18 C.F.R. § 385.214 (2006)), all timely motions to intervene and any motions to intervene out-of-time filed before the issuance date of this order are granted. Protests were filed by Washington Gas Light Company (Washington Gas), Public Service Company of North Carolina, Inc. (PSNC) and Shell NA LNG LLC, BP Energy Company and Statoil Natural Gas LLC (collectively, LTD-1 Shippers). The protests are discussed below. On May 21, 2007, Cove Point filed an answer to the protests and comments.

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<sup>1</sup> Second Revised Sheet No. 216 to Cove Point's FERC Gas Tariff, Original Volume No. 1.

3. Cove Point proposes to add section 5(b)(2) to the General Terms and Conditions (GT&C) of its FERC Gas Tariff allowing it to agree, on a not unduly discriminatory basis, with a customer to: (a) the termination of an existing service agreement prior to its expiration date contingent upon negotiated conditions, including the payment of any agreed upon termination fees; (b) a term for a service agreement beginning upon specified events related to the availability of necessary infrastructure; or (c) an option for the customer to terminate a service agreement prior to the end of the term upon specified events related to the unavailability or termination of related contractual rights with Cove Point or with another upstream or downstream service provider. The proposed tariff language explicitly provides that any agreement by Cove Point under this authority shall not constitute a material deviation from the applicable Form of Service Agreement.

4. Cove Point states that it does not believe that there is any barrier to a pipeline agreeing to a terminate a service with pre-granted abandonment authority and notes that section 4(l)<sup>2</sup> of its existing tariff contemplates the possibility of Cove Point and a customer mutually agreeing to a turnback of capacity. Cove Point argues that other pipelines have added such authority in their tariffs.<sup>3</sup>

5. Cove Point states that neither Cove Point nor a customer would be required to agree to early contract termination, and any mutual agreement to do so could be contingent upon various conditions negotiated by the parties, including termination fees.

6. The second part of Cove Point's proposal allows Cove Point to agree with a customer, on a not unduly discriminatory basis, to commence service upon specified events related to the availability of necessary infrastructure. Cove Point states that, in cases involving new facility construction, the commencement of service depends on the completion of facilities and the availability of necessary infrastructure. Cove Point asserts that, in some cases, the service commencement date might be tied to future infrastructure availability at the time of the service agreement is executed and that the Commission sometimes requires a pipeline to execute service agreements prior to

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<sup>2</sup> Section 4(l) provides, for LTD-1 agreements in effect as of October 1, 2004, that for any Rate Schedule FPS services terminated through contract termination or turnback of capacity, the resulting capacity that becomes available will be allocated to Rate Schedule LTD-1 shippers and the resulting LTD-1 storage ratios will be modified accordingly. In such event, Cove Point will make a compliance filing to place rates into effect reflecting the reallocated revenue responsibility associated with the relinquished service at maximum rates, together with the associated storage and transportation capacity to LTD-1 service and revising the storage rates applicable to LTD-1 service.

<sup>3</sup> Citing *Northern Natural Gas Co.*, 118 FERC ¶ 61,124 (2007); *National Fuel Gas Supply Corporation*, 115 FERC ¶ 61,127 and 116 FERC ¶ 61,307 (2006).

construction as a certificate condition. Cove Point argues that, in those cases, the actual date for service commencement cannot be specified at the time of execution of a service agreement. Cove Point asserts that such a defined service commencement date is not a material deviation from a form of service agreement with a blank for a starting date but it is proposing to modify its tariff to avoid any potential uncertainty.

7. The third part of Cove Point's proposal permits Cove Point and a customer to agree in advance that, if necessary upstream or downstream service becomes unavailable, the customer may terminate the agreement. Cove Point states that, absent this tariff filing, a contract with such a termination provision would constitute a material deviation under Commission precedent. Cove Point argues that allowing pipelines to agree upon such terms might make potential customers more willing to enter into the type of long-term agreements necessary to support the construction of needed infrastructure.

8. Cove Point asserts that allowing Cove Point and its customers to include such mutually-agreed upon provisions related to the term of service in their agreements will not present any substantial risk of undue discrimination or harm any other customer. Cove Point states that it will treat terms agreed upon pursuant to proposed section 5(b)(2) of its GT&C as special details pertaining to a service agreement that must be included in postings on Cove Point's website pursuant to section 284.13(b)(viii) of the Commission's regulations.<sup>4</sup> Cove Point states that such postings will allow customers and the Commission to monitor Cove Point's use of its new tariff authority.

9. Cove Point asserts that the ability of Cove Point and its customers to include termination rights in a service agreement as well as terms specifying the service commencement date, without the regulatory uncertainty inherent in a nonconforming agreement that must be filed with the Commission for individual approval, will facilitate contracting for new services and support the Commission's goal of promoting the construction of needed natural gas infrastructure.

10. Washington Gas and PSNC both protest the proposal, arguing that the existing requirement that Cove Point file contracts that materially deviate from the Pro Forma Service Agreement for prior Commission approval ensures that there is no undue discrimination or operational concerns for the remaining shippers and therefore such case-specific prior approvals should not be eliminated. Washington Gas and PSNC state that Cove Point has very few customers and it is therefore difficult to revise a contract with one party without unduly discriminating against other customers. Washington Gas points out that the Cove Point pipeline only serves seven shippers, three with terminalling services and four with peaking services. PSNC argues that Cove Point has not demonstrated that a generic authorization of all such section 5(b) arrangements serves the public interest. Washington Gas asserts that Cove Point has not met its burden of

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<sup>4</sup> 18 C.F.R. § 284.13(b)(viii) (2006).

showing that the notice provision protection of filing contracts with such arrangements with the Commission can be omitted. Washington Gas and PSNC request that the Commission reject the proposed tariff sheets or, alternatively, set this matter for technical conference.

11. Washington Gas asserts that the reactivation of the Cove Point terminal, efforts to add new facilities and rehabilitate old facilities and to expand the capacity have been continuously challenged by the Rate Schedule FPS and LTD shippers.<sup>5</sup> Washington Gas asserts that Cove Point has not shown how the proposed pre-approval of private contracts is consistent with Commission policy to promote transparency in the marketplace and that Cove Point has not demonstrated why facilitating new services is a legitimate basis for approving the proposal, since the Cove Point pipeline is fully subscribed.

12. PSNC states that the Commission ruled in Docket No. RP05-43-000, *et al.*<sup>6</sup> that the FPS shippers had evergreen rights which would not trigger the Right of First Refusal provisions in a manner which would permit Rate Schedule LTD service to displace the FPS shippers. PSNC asserts that the jurisdictional status of the Cove Point project is pending before the United States Court of Appeals for the D.C. Circuit<sup>7</sup> and that the instant proposal will add to the confusion. PSNC asserts that the Commission's consumer protection role would be further compromised if Cove Point's discretion increased while the confused state of the Commission's jurisdiction over the Cove Point facilities remains unresolved. PSNC argues that, to the extent that the contracts are subject to the Natural Gas Act (NGA), then such arrangements deserve the full scrutiny that the Commission has previously provided in dockets such as RP05-43-000, *et al.* PSNC argues that, since Cove Point now seeks to operate both as a regulated and unregulated entity, the Commission must maintain safeguards so that regulated service will not be forced to subsidize or be displaced by unregulated service. PSNC argues that the various cases cited by Cove Point in its transmittal letter do not involve such conflicts.

13. PSNC argues that simply posting the special details of each arrangement on its website would place the burden of detection and proof on the customer by requiring the

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<sup>5</sup> Rate Schedule LTD-1 is a firm LNG tanker peaking service and Rate Schedule LTD-2 is an interruptible LNG tanker peaking service; Rate Schedule FPS-1 is a 10-day firm peaking service, Rate Schedule FPS-2 is a 5-day firm peaking service and Rate Schedule FPS-3 is a 3-day firm peaking service.

<sup>6</sup> *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,068 (2006).

<sup>7</sup> Appeal pending *Public Service of North Carolina v. FERC*, No. 07-1061 (D.C. Cir. 2007) filed 3/2/07.

customer to complain of undue discrimination after a contract has been executed and posted.

14. The LTD-1 Shippers argue that Cove Point's customers should not be responsible for any undercollection of costs associated with early termination and that Cove Point should not be permitted to retain overcollections of revenue associated with early contract terminations. The LTD-1 Shippers also argue that Cove Point should be required to bear the burden of proof in its next NGA section 4 general rate case that any rate impacts caused by early termination are just and reasonable and should be placed at risk for any costs associated with early termination of negotiated rate contracts. The LTD-1 Shippers assert that Cove Point should be directed to establish a mechanism to track these costs to ensure that Cove Point will bear these costs. They state that Cove Point should post any terms agreed upon under proposed section 5(b)(2) on its website, as it agreed, in order to promote transactional transparency and to assist in ensuring that Cove Point exercises its discretion in a not unduly discriminatory manner.

15. PSNC and Washington Gas assert that revising a contract may adversely affect other customers and argue that the notice and prior approval aspects associated with filing contracts which may materially deviate from the Pro Forma Service Agreement should not be eliminated. PSNC argues that simply posting the special details of each arrangement on its website would place the burden of detection and proof on the customer by requiring the customer to complain of undue discrimination after a contract has been executed and posted. The Commission rejects these arguments. With the exception of rates and costs, which we discuss later herein, none of the protesters have explained how they might be adversely affected by the early termination of another shipper's agreement, nor have they identified any possible issues or adverse effects resulting from early termination that would not also result if the contracts were permitted to expire as scheduled. Furthermore, notice and prior approval protection is provided to Cove Point's other customers pursuant to section 4(l) of Cove Point's GT&C, which requires it to make a compliance filing whenever Rate Schedule FPS services are terminated and capacity is reallocated among the LTD-1 shippers.

16. PSNC asserts that the jurisdictional status of the Cove Point project is pending before the United States Court of Appeals for the D.C. Circuit and that the instant proposal will add to the confusion. It is premature and speculative to address all of the possible outcomes from that proceeding. We are acting on the instant filing before us. Any possible issues arising out of the court proceeding will be addressed after the outcome is known.

17. The LTD-1 Shippers argue that Cove Point's customers should not be responsible for any undercollection of costs associated with early termination and that Cove Point should be required to bear the burden of proof in its next general NGA section 4 rate case to show that any rate impacts caused by early termination are just and reasonable. The

LTD-1 Shippers also argue that Cove Point should be directed to establish a mechanism to track these costs. Cove Point's customers will have the opportunity to challenge any such costs either in the NGA section 4 compliance filing required by section 4(l) of its GT&C or in Cove Point's next general NGA section 4 rate proceeding, whichever is filed first after any such early termination. There is no need to require Cove Point to establish a tracking mechanism since Cove Point will bear the burden-of-proof in any NGA section 4 filing to establish and reallocate these costs.

18. The LTD-1 Shippers assert that Cove Point should be required to post any terms agreed upon under proposed section 5(b)(2) on its website, as it agreed. Cove Point is already required to do so under section 284.13(b)(1)(viii) of the Commission's regulations.

19. The LTD-1 Shippers argue that Cove Point should not be permitted to retain overcollections of revenue associated with early contract terminations. The Commission shares this concern. The Commission has permitted pipelines to incorporate early termination clauses with termination (or exit) fees into their tariffs where they have identified the situations under which they will impose the fees and how the fees are determined.<sup>8</sup> However, under NGA section 4, a pipeline has the burden to show that any proposed rate or charge is just and reasonable. Here Cove Point has not shown that its proposal to charge a negotiated termination fee, without setting forth the situations under which they will impose the fees and how the fees are determined, is just and reasonable. Therefore Cove Point must file, within 20 days of the issuance of this order, to either explain why its proposal to negotiate termination fee levels is just and reasonable or revise its proposal to specify the situations under which it will impose the fees and how the fees are determined. The requests for a technical conference are denied.

By direction of the Commission.

Kimberly D. Bose,  
Secretary.

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<sup>8</sup> See *National Fuel Gas Supply Corporation*, 115 FERC ¶ 61,127 and 116 FERC ¶ 61,307 (2006), accepting Original Sheet Nos. 482 and 483 of National Fuel Gas Supply Corporation's FERC Gas Tariff, Fourth Revised Volume No. 1; see also *Northern Natural Gas Co.*, 118 FERC ¶ 61,124 (2007), accepting Third Revised Sheet No. 142A of Northern Natural Gas Co.'s, FERC Gas Tariff, Fifth Revised Volume No. 1 and *Northwest Pipeline Corporation*, 114 FERC ¶ 61,144 (2006).